

## Minutes HEARING OFFICER APRIL 20, 2010

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

**Present:**

David Williams, Hearing Officer  
Steve Abrahamson, Planning & Zoning Coordinator  
Sherri Lesser, Senior Planner  
Diana Kaminski, Senior Planner  
Shawn Daffara, Planner II  
Nick Graves, Planning Intern

**Number of Interested Citizens Present: 13**

Meeting convened at 1:30 PM and was called to order by Mr. Williams. He noted that anyone wishing to appeal a decision made today by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) days by May 4, 2010 at 3:00 PM to the Development Services Department.

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1. Mr. Williams approved the Hearing Officer Minutes for April 6, 2010.

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2. Mr. Williams noted that the following case(s) had been removed from this agenda:

- Request by **TEMPE CORPORATE CENTER - CLEARWIRE – AZ-PHX0725E (PL090492)** (Rulon Anderson/Realand Consulting; Wilshire Enterprises Inc., property owner) located at 4515 South McClintock Drive in the CSS, Commercial Shopping and Services District for:

**ZUP10024** Use permit to allow a sixty foot (60 ft) monopole (monopalm).  
**CONTINUED TO MAY 4, 2010 HEARING OFFICER**

- Request by **TEMPE PALMS APARTMENTS (PL100082)** (Michelle Sarina/Tempe Palms LLC, applicant; Tempe Palms LLC, property owner) located at 1026 East Spence Avenue in the R-4, Multi-Family Residential General District for:

**ZUP10026** Use permit to allow a fraternity.  
**ADMINISTRATIVELY TRANSFERRED TO THE MAY 11, 2010 DEVELOPMENT REVIEW COMMISSION**

- Review of the following for possible revocation of the use permit per the City of Tempe Attorney office's direction due to non-compliance with the Condition of Approval No. 4, which reads, "All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective. Since smoking will be permitted on the premises, the owner/management is responsible to adhere to the 2003 International Mechanical Code."

Request by **HAREM NIGHTS (PL090148)** (Kahlil Abulaban, applicant; 1630 Apache LLC, property owner) located at 1630 East Apache Boulevard, Suite No. 103, in the CSS, Commercial Shopping and Services District for:

**ZUP09063** Use permit to allow a hookah lounge.  
(Use permit was approved by the Hearing Officer at the May 19, 2009 HO hearing.)  
**CONTINUED TO MAY 19, 2010 HEARING OFFICER**

- **Review of the following for possible revocation of the use permit per the City of Tempe Attorney office's direction due to non-compliance with the Condition of Approval No. 4, which reads, "All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective."**

Request by **SUNSTOP PLAZA – URBAN CAFE (PL080094)** (Mohamed Elghalayini, applicant; Royal West Investments LLC, property owner) located at 1212 East Apache Boulevard, Suite No. 102, in the CSS, Commercial Shopping and Services District for:

**ZUP08063** Use permit to allow a hookah lounge/tobacco retailer.  
(Use permit was approved by the Hearing Officer at the May 6, 2008 HO hearing.)  
**REVOCATION REQUEST WITHDRAWN BY STAFF**

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3. Request by **ROYAL PALMS PLAZA - CLEARWIRE – AZ-PHX0538E (PL100008)** (Rulon Anderson/Realand Consulting; Pollack Enterprises Inc., property owner) located at 1805 East Elliot Road in the PCC-1, Planned Commercial Center Neighborhood District for:

**ZUP10025** Use permit to allow a sixty foot (60 ft) monopole (monopine).

Mr. Rulon Anderson of Realand Consulting was present to represent this case.

Shawn Daffara, staff planner, gave an overview of this case and stated that no further public input has been received since the staff report was issued.

Mr. Williams questioned whether there were specific separation requirements between facilities of this type and residential districts. Mr. Daffara explained that they tried to site these type of facilities in an area away from single family residential districts. He noted that in this case, there was a nearby greenbelt area to this shopping center. He stated that there was nothing specific in the code to prohibit these facilities near residential districts.

Mr. Anderson presented samples of the faux pine. He explained that the sites were chosen in order to be as sensitive as possible to nearby residential areas.

Mr. Jim Peterson, Tempe resident, spoke of concern regarding the monopine as he lives in the area adjacent to the shopping center. He noted that there had been a lot of vandalism in the area, and the advantages of co-location.

Mr. Anderson explained that sometimes co-locations do not work due to height requirements, although the option is researched thoroughly.

Mr. Williams noted his reservations regarding the proximity of these facilities being located near residential districts however due to lack of code restrictions or other City policy he would approve this request.

**DECISION:**

Mr. Williams approved PL100008/ZUP10025 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. The ~~monopalm~~ **monopine** shall be no greater than 60' – 0" (sixty feet) in height (to the top of the tree).  
**CORRECTED BY DEVELOPMENT SERVICES**
3. Any intensification or expansion of use will require a new use permit.
4. The proposed enclosure shall be constructed of similar material and color to match the existing refuse enclosure for the property.
5. The monopine shall be designed to blend in with the "Aleppo Pine" species. Details can be worked out with staff prior to Building Permits being issued.
6. The enclosure gate shall require lighting to meet five (5) foot candles at the gate.
7. Light fixture to be full cut off design and matches the existing light fixtures (HPS, High Pressure Sodium) mounted on rear of the shopping center.
8. The wireless device shall be removed within thirty (30) days of discontinuance of use.

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4. Request by the **CITY OF TEMPE – WATER TREATMENT PLANT (PL100023)** (Phil Brown/City of Tempe Engineering Department, applicant; City of Tempe, property owner) located at 6600 South Price Road in the AG, Agricultural District for:

**VAR10004** Variance to increase the maximum building height from thirty feet (30 ft) to sixty feet (60 ft) for a carbon silo.

Mr. Phil Brown of the City of Tempe Engineering Department was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case and stated that no further public input has been received since the staff report was issued.

Mr. Williams asked what a carbon silo was. Mr. Brown explained that a carbon silo holds carbon activated powder.

Mr. Ron Webster, Tempe resident, stated that he lives directly behind the water treatment plant. He asked what the diameter and size was involved and how did they load the carbon into the silo . . would there be a dust factor in the air or an exposure factor.

Mr. Rob McCandless, Tempe resident, asked if a line-of-sight study had been done for this project. His concern was how this structure would affect the visibility of the neighborhood due to its height.

Mr. Brown responded that the silo is 14 ft in diameter and approximately 60 ft tall. The structure would meet all Building Safety requirements. Loading of the carbon is done from a truck delivery to the site and the carbon is actually blown into the silo by a discharge pipe from the truck to the tower. The tower (silo) is enclosed. It has been placed on the site as far away from the residential district as possible.

In response to a question from Mr. Williams, Mr. Brown stated that the fact that there is carbon dust in the basins in the southwest corner of the site is not surprising. Currently a different system is being used and the silo will be an improvement on that system. The Arizona Environmental Quality regulates these basins which are cleaned out every 3 to 6 months and the residue taken to the landfill. Construction is scheduled to start in August of 2010 and should be completed next year.

Discussion regarding the bins and related sediment was held. It was noted that this was a separate issue from the use permit for the silo which is before the Hearing Officer today and that the basins are located in another area. Mr. Brown noted that the silo would change the way the carbon is delivered into the wet system.

Mr. Webster stated that he was very pleased with the manner in which the City responds to issues and their quickness in resolving the problems. At this point, he did not feel that there was a dust issue which occurred about 8 to 10 yrs ago.

Mr. Williams questioned staff about the need for a condition of approval to address the dust/air quality. Mr. Abrahamson responded that the City is required to follow the guidelines and regulations of the Arizona Environmental Quality and that addresses covers any air pollution/dust issues so that there is no need for an additional Condition of Approval. There is a phone number for citizens to call if issues arise.

**DECISION:**

Mr. Williams approved PL100023/VAR10004 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.

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5. Request by **RIO SALADO CENTER - TEEN DANCE CLUB (PL100060)** (Thomas George, applicant; Rio Salado Center LLC, property owner) located at 1290 North Scottsdale Road, Suite Nos. 120 – 122 in the PCC-1, Planned Commercial Center Neighborhood District for:

**ZUP10020** Use permit to allow a teen dance hall with live indoor entertainment (live bands, DJ).

Mr. Thomas George was present to represent this case.

Nick Graves, staff planner, gave an overview of this case and stated that no further public input has been received since the staff report was issued. A shared parking analysis was submitted by the applicant and approved by staff.

Mr. Williams questioned Mr. George how many customers were anticipated. Mr. George responded from 400 to 500 with the target audience from the ages of 16 to 21 so everyone would be subject to the same curfew. Legal ID accepted by the State of Arizona would be adequate to confirm the age of attendees. He stated the hours of operation would be from 6 PM to 11:30 PM.

Ms. Darlene Justus, representing the North Tempe Neighborhood Association, addressed parking, noise, privacy and security issues. She asked who would be providing security services . . Tempe Police or private security services. In the past there had been a bar type club located at this site about 10 yrs ago and noise had been a huge issue. Due to the glass doors, NTNA was advised that sound proofing would be minimal. The proximity to the apartments nearby is an issue. In April 2009, the community began meeting with the police on a regular basis because of issues with the apartment complex (Santa Fe Court). The apartment complex is under criminal abatement, Ms. Justus, explained. Since November 2009 to March 2010 there have been 49 arrests and there are a lot of transients that have been congregating in that area. To have a teen center in close proximity directly across from this apartment complex which is well known for drug problems is not a good location. The area is infested with crime.

Mr. Lane Caraway, Tempe resident, noted that the club in this location 8 yrs ago was closed due to noise, drugs and prostitution. He concurred with Darlene Justus' remarks and stated that the Santa Fe Court apartments were the cancer of the neighborhood and well known to Tempe police for the problems there. Nobody wants a club with kids in that location. There are no 200 parking spaces available as indicated by the applicant. Noise, alcohol and drug problems will exist. You cannot sound proof something that is mostly glass and there is no way that kids coming and leaving will not elevate the noise levels. The neighborhood has had a tremendous problem with crime, Mr. Caraway stated, and a venue of this type will escalate the problems in that area. It was his understanding that the Tempe Police Department has issued a letter advising against this venue. Neighbors and residents have not been apprised of security measures that would be taken. Mr. Caraway presented a petition against this request. Even if the club closed at 11:30 PM, the kids would continue to sit in the parking lot.

Mr. Williams questioned staff if a recommendation from the Tempe Police Department against this request. Ms. Lesser responded that a letter had been received from the Tempe Crime Prevention Department but she did not express opposition but rather concern.

**DECISION:**

Mr. Williams continued PL100060/ZUP10020 to the May 4, 2010 Hearing Officer hearing to allow for expanded information on this venue.

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6. Request by the City of Tempe – Code Compliance Department to abate public nuisance items in violation of the Tempe City Code for the **DOEDE RESIDENCE (PL100071/ABT10002/CE100251)** (Brandy Zedlar, Inspector; Douglas Doede, property owner) located at 1028 West Cornell Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Diana Kaminski, staff planner, gave an overview of this case and stated that there was an unregistered vehicle & landscaping issues. Due to the on-going history of this property staff was requesting a 180 day open abatement period.

Ms. Brandy Zedlar, Code Inspector, stated that she had re-inspected this property this morning and there had been no change or improvements in the issues. This property has been abated three times in the past and the property owner is unresponsive.

**DECISION:**

Mr. Williams approved abatement proceedings for PL100071/ABT10002 for an open period of 180 days.

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7. Request by the City of Tempe – Code Compliance Department to abate public nuisance items in violation of the Tempe City Code for the **TOTH PROPERTY (PL100084/ABT10003/CE100355)** (Jody Benson, Inspector; Greg Toth, property owner) located at 3332 South Ventura Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Sherri Lesser, staff planner, gave an overview of this case and stated that the property owner is out of the country and there were continuing issues regarding overheight weeds, green pool and security issues.

Jody Benson, Code Inspector, confirmed that the property is vacant and the property owner out of the country. Since the case has been opened the property has continued to deteriorate and staff requests an open period of 180 days for this abatement.

**DECISION:**

Mr. Williams approved abatement proceedings for PL100084/ABT10003 for an open period of 180 days.

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8. Request by the City of Tempe – Code Compliance Department to abate public nuisance items in violation of the Tempe City Code for the **FREAND RESIDENCE (PL100085/ABT10004/CE096451)** (Jody Benson, Inspector; Lee Roy Freand, property owner) located at 3120 South Dromedary Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Sherri Lesser, staff planner, gave an overview of this case and stated that the property was 90% complete and requested a continuance for 30 days.

**DECISION:**

Mr. Williams continued abatement proceedings for PL100085/ABT10004 to the May 19, 2010 Hearing Officer hearing.

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The next Hearing Officer public hearing will be held on **Tuesday, May 4, 2010.**

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There being no further business the public hearing adjourned at 2:42 PM.

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Prepared by: Diane McGuire, Administrative Assistant II

Reviewed by:



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Steve Abrahamson, Planning & Zoning Coordinator  
for David Williams, Hearing Officer

SA:dm